

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 MSC MEDITERRANEAN SHIPPING
4 COMPANY S.A.,

5 Plaintiff,

6 v.
7

8 BNSF RAILWAY COMPANY.,

9 Defendants.
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CASE NO. 2:24-cv-1038-SPG-KES

STIPULATED PROTECTIVE ORDER

[Discovery Document: Referred to
Magistrate Judge Karen E. Scott]

12 **1. INTRODUCTION**

13 **A. Purposes and Limitations**

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15 Discovery in this action is likely to involve production of confidential,
16 proprietary, or private information for which special protection from public disclosure
17 and from use for any purpose other than prosecuting this litigation may be warranted.
18 Accordingly, the parties hereby stipulate to and petition the Court to enter the
19 following Stipulated Protective Order. The parties acknowledge that this Order does
20 not confer blanket protections on all disclosures or responses to discovery and that
21 the protection it affords from public disclosure and use extends only to the limited
22 information or items that are entitled to confidential treatment under the applicable
23 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
24 that this Stipulated Protective Order does not entitle them to file confidential
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1 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
2 followed and the standards that will be applied when a party seeks permission from
3 the court to file material under seal.
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5 **B. Good Cause Statement**

6 This action is likely to involve commercial, financial, technical, and/or
7 proprietary information for which special protection from public disclosure and from
8 use for any purpose other than prosecution of this action is warranted. Such
9 confidential and proprietary materials and information consist of, among other things,
10 confidential contractual terms and pricing for services, information regarding
11 confidential business practices, or information otherwise generally unavailable to the
12 public, or which may be privileged or otherwise protected from disclosure under state
13 or federal statutes, court rules, case decisions, or common law. Accordingly, to
14 expedite the flow of information, to facilitate the prompt resolution of disputes over
15 confidentiality of discovery materials, to adequately protect information the parties
16 are entitled to keep confidential, to ensure that the parties are permitted reasonable
17 necessary uses of such material in preparation for and in the conduct of trial, to address
18 their handling at the end of the litigation, and to serve the ends of justice, a protective
19 order for such information is justified in this matter. It is the intent of the parties that
20 information will not be designated as confidential for tactical reasons and that nothing
21 be so designated without a good faith belief that it has been maintained in a
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1 confidential, non-public manner, and there is good cause why it should not be part of
2 the public record of this case.

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4 **2. DEFINITIONS**

5 2.1. Action: This pending consolidated federal lawsuit.

6 2.2. Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

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9 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how
10 it is generated, stored, or maintained) or tangible things that qualify for protection
11 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
12 Cause Statement.

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14 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16
17 2.5. Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20
21 2.6. Disclosure or Discovery Material: all items or information, regardless of
22 the medium or manner in which it is generated, stored, or maintained (including,
23 among other things, testimony, transcripts, and tangible things), that are produced or
24 generated in disclosures or responses to discovery in this matter.
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1 2.7. Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 an expert witness or as a consultant in this Action.
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5 2.8. In-House Counsel: attorneys who are employees of a party to this Action.
6 House Counsel does not include Outside Counsel of Record or any other outside
7 counsel.
8

9 2.9. Nonparty: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.
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12 2.10. Outside Counsel of Record: attorneys who are not employees of a party
13 to this Action but are retained to represent or advise a party to this Action and have
14 appeared in this Action on behalf of that party or are affiliated with a law firm which
15 has appeared on behalf of that party, and includes support staff.
16

17 2.11. Party: any party to this Action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).
20

21 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.
23

24 2.13. Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium)
27 and their employees and subcontractors.
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1 2.14. Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

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4 3.15. Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only
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9 Protected Material (as defined above), but also (1) any information copied or extracted
10 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
11 Protected Material; and (3) any testimony, conversations, or presentations by Parties
12 or their Counsel that might reveal Protected Material.
13

14 Any use of Protected Material at trial shall be governed by the orders of the
15 trial judge. This Order does not govern the use of Protected Material at trial.
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17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
22 or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
24 including the time limits for filing any motions or applications for extension of time
25 pursuant to applicable law.
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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1. Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection
4 under this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents, items,
8 or communications for which protection is not warranted are not swept unjustifiably
9 within the ambit of this Order.
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13 Mass, indiscriminate, or routinized designations are prohibited. Designations
14 that are shown to be clearly unjustified or that have been made for an improper
15 purpose (e.g., to unnecessarily encumber the case development process or to impose
16 unnecessary expenses and burdens on other parties) may expose the Designating Party
17 to sanctions.
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20 If it comes to a Designating Party's attention that information or items that it
21 designated for protection do not qualify for protection, that Designating Party must
22 promptly notify all other Parties that it is withdrawing the inapplicable designation
23

24 5.2. Manner and Timing of Designations.

25 Except as otherwise provided in this Order (*see, e.g.*, second paragraph of
26 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
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1 Material that qualifies for protection under this Order must be clearly so designated
2 before the material is disclosed or produced.

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4 Designation in conformity with this Order requires:

5 (a) for information in documentary form (e.g., paper or electronic
6 documents, but excluding transcripts of depositions or other pretrial or trial
7 proceedings), that the Producing Party affix at a minimum, the legend
8 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page
9 that contains protected material. If only a portion or portions of the material on
10 a page qualifies for protection, the Producing Party also must clearly identify
11 the protected portion(s) (e.g., by making appropriate markings in the margins).
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14 A Party or Non-Party that makes original documents available for
15 inspection need not designate them for protection until after the inspecting
16 Party has indicated which documents it would like copied and produced.
17 During the inspection and before the designation, all of the material made
18 available for inspection shall be deemed “CONFIDENTIAL.” After the
19 inspecting Party has identified the documents it wants copied and produced, the
20 Producing Party must determine which documents, or portions thereof, qualify
21 for protection under this Order. Then, before producing the specified
22 documents, the Producing Party must affix the “CONFIDENTIAL legend” to
23 each page that contains Protected Material. If only a portion or portions of the
24 material on a page qualifies for protection, the Producing Party also must
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1 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings
2 in the margins).

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4 (b) for testimony given in depositions that the Designating Party identify
5 the Disclosure or Discovery Material on the record, before the close of the
6 deposition all protected testimony.

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8 (c) for information produced in some form other than documentary and
9 for any other tangible items, that the Producing Party affix in a prominent place
10 on the exterior of the container or containers in which the information is stored
11 the legend “CONFIDENTIAL.” If only a portion or portions of the information
12 warrants protection, the Producing Party, to the extent practicable, shall
13 identify the protected portion(s).

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16 **5.3. Inadvertent Failure to Designate.**

17 If timely corrected, an inadvertent failure to designate qualified information or
18 items does not, standing alone, waive the Designating Party’s right to secure
19 protection under this Order for such material. Upon timely correction of a designation,
20 the Receiving Party must make reasonable efforts to assure that the material is treated
21 in accordance with the provisions of this Order.
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24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 **6.1. Timing of Challenges.**

26 Any Party or Non-Party may challenge a designation of confidentiality at any
27 time that is consistent with the Court’s Scheduling Order.
28

1 6.2. Meet and Confer.

2 The Challenging Party shall initiate the dispute resolution process under Local
3 Rule 37.1 et seq. or follow the procedures for informal, telephonic discovery hearings
4 on the Court's website.
5

6 6.3. Burden of Persuasion.

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8 The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose
10 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the Challenging Party to sanctions. Unless the Designating Party has waived
12 or withdrawn the confidentiality designation, all parties shall continue to afford the
13 material in question the level of protection to which it is entitled under the Producing
14 Party's designation until the Court rules on the challenge.
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17 **7. ACCESS TO AND USE OF PROTECTED MATERIALS**

18 7.1. Basic Principles.

19
20 A Receiving Party may use Protected Material that is disclosed or produced by
21 another Party or by a Non-Party in connection with this Action only for prosecuting,
22 defending, or attempting to settle this Action. Such Protected Material may be
23 disclosed only to the categories of persons and under the conditions described in this
24 Order. When the Action has been terminated, a Receiving Party must comply with
25 the provisions of section 13 below (FINAL DISPOSITION).
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1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.
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5 7.2. Disclosure of “CONFIDENTIAL” Information or Items.

6 Unless otherwise ordered by the court or permitted in writing by the
7 Designating Party, a Receiving Party may disclose any information or item designated
8 “CONFIDENTIAL” only to:
9

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
11 well as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;
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14 (b) the officers, directors, and employees (including House Counsel) of
15 the Receiving Party to whom disclosure is reasonably necessary for this Action;
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17 (c) Experts (as defined in this Order) of the Receiving Party to whom
18 disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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21 (d) the court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and Professional
24 Vendors to whom disclosure is reasonably necessary for this Action and who
25 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
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1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses ,and attorneys for witnesses, in
4 the Action to whom disclosure is reasonably necessary provided: (1) the
5 deposing party requests that the witness sign the form attached as Exhibit 1
6 hereto; and (2) they will not be permitted to keep any confidential information
7 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
8 A), unless otherwise agreed by the Designating Party or ordered by the court.
9 Pages of transcribed deposition testimony or exhibits to depositions that reveal
10 Protected Material may be separately bound by the court reporter and may not
11 be disclosed to anyone except as permitted under this Stipulated Protective
12 Order; and

13 (i) any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions.

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20 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
21 **PRODUCED IN OTHER LITIGATION**

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this Action as
24 “CONFIDENTIAL,” that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification
26 shall include a copy of the subpoena or court order;
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1 (b) promptly notify in writing the party who caused the subpoena or order
2 to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification shall
4 include a copy of this Stipulated Protective Order; and
5

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected.
8

9 If the Designating Party timely seeks a protective order, the Party served with
10 the subpoena or court order shall not produce any information designated in this action
11 as “CONFIDENTIAL” before a determination by the court from which the subpoena
12 or order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that court
14 of its confidential material and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
16 directive from another court.
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20 **9. A NONPARTY’S PROTECTED MATERIAL SOUGHT OT BE**
21 **PRODUCED IN THIS LITIGATION**

22 (a) The terms of this Order are applicable to information produced by a
23 Non-Party in this Action and designated as “CONFIDENTIAL.” Such
24 information produced by Non-Parties in connection with this litigation is
25 protected by the remedies and relief provided by this Order. Nothing in these
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1 provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

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4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party
6 is subject to an agreement with the Non-Party not to produce the Non-Party's
7 confidential information, then the Party shall:
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9 (1) promptly notify in writing the Requesting Party and the Non-
10 Party that some or all of the information requested is subject to a
11 confidentiality agreement with a Non-Party;
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13 (2) promptly provide the Non-Party with a copy of the Stipulated
14 Protective Order in this Action, the relevant discovery request(s), and a
15 reasonably specific description of the information requested; and
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17 (3) make the information requested available for inspection by the
18 Non-Party, if requested.
19

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party's confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the
24 Receiving Party shall not produce any information in its possession or control
25 that is subject to the confidentiality agreement with the Non-Party before a
26 determination by the court. Absent a court order to the contrary, the Non-Party
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1 shall bear the burden and expense of seeking protection in this court of its
2 Protected Material.

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4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
8 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
9 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
10 persons to whom unauthorized disclosures were made of all the terms of this Order,
11 and (d) request such person or persons to execute the “Acknowledgment and
12 Agreement to Be Bound” that is attached hereto as Exhibit A.
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16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
21 may be established in an e-discovery order that provides for production without prior
22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
23 parties reach an agreement on the effect of disclosure of a communication or
24 information covered by the attorney-client privilege or work product protection, the
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1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the court.

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4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

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8 12.2 Right to Assert Other Objections. By stipulating to the entry of this
9 Protective Order no Party waives any right it otherwise would have to object to
10 disclosing or producing any information or item on any ground not addressed in this
11 Stipulated Protective Order. Similarly, no Party waives any right to object on any
12 ground to use in evidence of any of the material covered by this Protective Order.

13
14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
16 only be filed under seal pursuant to a court order authorizing the sealing of the specific
17 Protected Material at issue. If a Party's request to file Protected Material under seal is
18 denied by the court, then the Receiving Party may file the information in the public
19 record unless otherwise instructed by the court.

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22 **13. FINAL DISPOSITION**

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in this
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
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1 summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the same person
4 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
5 category, where appropriate) all the Protected Material that was returned or destroyed
6 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
7 compilations, summaries or any other format reproducing or capturing any of the
8 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
9 archival copy of all pleadings, motion papers, trial, deposition, and hearing
10 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
11 reports, attorney work product, and consultant and expert work product, even if such
12 materials contain Protected Material. Any such archival copies that contain or
13 constitute Protected Material remain subject to this Protective Order as set forth in
14 Section 4 (DURATION).

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20 **14. VIOLATION**

21 Any violation of this Order may be punished by any and all appropriate
22 measures including, without limitation, contempt proceedings and/or monetary
23 sanctions.
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1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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3 Dated: September 11, 2025

/s/ James A. Marissen
Attorney for Plaintiff

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6 Dated: September 11, 2025

/s/ Benjamin H. Vaughan
Attorney for Defendant

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9 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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11 Dated: 9/12/2025

Karen E. Scott
Karen E. Scott
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Central District of California on
_____[date] in the case of MSC Mediterranean Shipping Company S.A., v.
BNSF Railway Company, 2:24-cv-1038-SPG-KES. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order. I further
agree to submit to the jurisdiction of the United States District Court for the Central
District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____